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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-261

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, *Petitioner*

vs.

KAYSER-ROTH CORPORATION, *Respondent*

On Petition for Writ of Certiorari

BRIEF FOR KAYSER-ROTH CORPORATION, IN OPPOSITION

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COUNTERSTATEMENT OF THE CASE

This action began on January 19, 1969, with the Declaration of Kayser-Roth Corporation in the Circuit Court of Rhea County, Tennessee, alleging a claim against the Textile Workers Union of America, AFL-CIO, for damages suffered from the Union's unlawful activities during a 1968 strike at the Company's hosiery plant in Dayton, Tennessee. The Union removed the action to the United States District Court for the Eastern District of Tennessee.

Trial before the District Court was commenced in May and concluded in September of 1971. The Court entered its findings of fact and conclusions of law in July of 1972. It was found that the Company sustained

damages of $1,158,632.46 as a direct and proximate result of the violence and other unlawful strike activity which, by the clear weight of the evidence, the Union either participated in, authorized or ratified. The Court ruled that the plaintiff was entitled to recover this amount as compensatory damages. Punitive damages were denied.

The judgment of the District Court was appealed to the United States Court of Appeals for the Sixth Circuit. On May 31, 1973, the Court of Appeals affirmed the decision below. The Union's Petition for a Writ of Certiorari was received by the Company on August 8, 1973.

FACTS PERTINENT TO THE DECISION BELOW

The Beginning Of The Strike

The Dayton Plant of the Kayser-Roth Corporation employed approximately 535 employees for the manufacturing of socks, pantyhose and "fishnet" tights. The Plant was managed by Everett Roberson.

The Textile Workers Union of America, AFL-CIO, was certified as the bargaining agent for the production and maintenance employees of the Plant in September 1967. Following certification, there was extensive bargaining between the Union and the Company until May 5, 1968, without an agreement being reached. Acting for the Union in these negotiations were Adolph Benet, International Vice President of the Union, and Ted Benton, Walt Rainey and Robert Beame, International Representatives of the Union (72a).[1]

[1]Page references followed by "a" are to the "Joint Appendix" filed in the Court of Appeals. Undesignated page references are to the "Official Transcript of Proceedings."

On May 5, these union officials presided over a meeting attended by 200 to 350 employees. During the meeting, a vote was taken with a result unanimously in favor of a strike. Benet thereupon instructed all of those present to gather in front of the Plant on the following morning at 6:00 a.m. (75a).

The next morning, between 150 and 400 persons gathered at the plant entrances. The plant entrances were blocked and there was pushing and shoving between strikers and people attempting to go to work. Union Vice President Benet and Representatives Benton and Rainey were present. After Benet determined that no one else was attempting to go into the Plant, he called a meeting of the strikers at the Union's headquarters which had been established 200 feet north of the plant premises. At this location, the Union rented a house trailer and equipped it with telephones for use during the strike (45a, 75a, 134a, 1445).

At the meeting, Benet, Benton and Rainey appointed picket captains and instructed the pickets. Benton directed that the pickets should walk in such a manner as to make entrance to the Plant difficult. He stated "we don't have to get far enough apart to let anyone in or anything" and Rainey told the pickets "stop them any way you can, take their clothes off or anything." Benton further informed the strikers that the Union would provide bail in the event any of them were arrested (46a, 74a, 75a, 81a).

Mass picketing resumed on the second day of the strike. The strikers parked their automobiles bumper to bumper along the street in front of the Plant. Thirty or 40 pickets circled in each gate. As a group of female office employees, riding in the company station wagon,

attempted to enter the plant premises, the automobile was surrounded by 30 or 40 strikers who rocked it from side to side, bouncing its wheels off the ground (137a).

On the afternoon of May 7, the Company petitioned the Chancery Court of Rhea County for an injunction against the mass picketing. Union representatives Benet and Benton appeared at the Court hearing and assured the Chancellor that there would be no further interference with traffic coming and going at the Plant. Upon receiving these assurances, the Chancellor refused to grant an injunction (403a).

However, on the next morning, Benet and Benton violated their own assurances to the Court. They returned to the picket line along with a large number of strikers and marched in circles in the entrance ways, preventing company trucks from entering and leaving the premises. Benton and Rainey were filmed actively participating in these incidents. The trucks, which had come from North Carolina to deliver materials to the Plant, were blocked and impeded by the strikers during that entire day and the following day. Benet, Benton and Rainey were on the scene, directing the strikers' activities (139a-153a).

As a consequence, the Chancellor entered an injunction prohibiting further interference with persons seeking access to the Plant and prohibiting groups of strikers from assembling within 40 feet of the company gates (47a).

Interference With Company Trucks And Common Carriers

After issuance of the injunction, the pickets continued to block vehicles. On each occasion that drivers of company trucks attempted to deliver materials, the pickets

walked in the entrance ways in such a manner that the drivers could not enter or depart without running into them. The Company was unable to move merchandise into or out of the Plant. During this time, Ted Benton was on the scene every day, supervising the strike. He was either actually on the picket line or at union headquarters, just north of the Plant. Whenever he had to leave, Walt Rainey was called in to replace him (46a, 101a, 156a, 176a, 255a, 470a). The District Court found that the union representatives, even when present at the picket line, did nothing to prevent the activities directed at company vehicles (48).

Due to the nature of the Company's business, it was necessary for daily shipments to be made by common carrier to retail stores located throughout the United States. Central Motor Express, Inc., was the only common carrier which had Interstate Commerce Commission authority to take the shipments to Chattanooga to connect with other trucking lines having authority to reach the various destination points over the country. The Company also shipped by Thurston Motor Lines, Inc., but Thurston could only deliver to eastern destinations through Charlotte, North Carolina. United Parcel Service also took limited quantity shipments (128a).

On May 17, Central Motor Express sent a tractor and two trailers to the Plant to pick up shipments. When Ted Cline, Central's Terminal Manager in Chattanooga, attempted to take the second trailer onto the plant premises, he was surrounded by strikers and blocked for 30 minutes. Plant Manager Roberson called the Sheriff's Office for help, but when the officer arrived, he arrested Cline, allegedly for blocking traffic, and took him to jail. Cline stated that he had never in his life been subjected to treatment such as he received from the strikers. Cen-

tral filed embargo notices with the Interstate Commerce Commission and refused to continue pickups or deliveries from the Dayton Plant. No Central truck got into or out of the plant property for several months thereafter. The first trailer, which had been left at the Kayser-Roth dock, remained there, with slashed tires, until September (162a, 383a).

Three days after the Central incident, a United Parcel Service truck was blocked by the pickets. The Company was unable to obtain any further service from that source until after September 1968 (162a).

On May 21, Thurston's Chattanooga Terminal Manager, John Banks, and a supervisor, David Pardue, attempted to drive through the plant gates. They were delayed by pickets getting in front of the truck in the entrance way. Ted Benton and Robert Beame were filmed participating in this incident. After Pardue eased the vehicle past the pickets, rocks were thrown by the strikers, barely missing Banks and hitting the trailer. Within minutes, Banks and Pardue were arrested on blank warrants, sworn out by the pickets, and charged with assault. Banks was ordered to take his truck and follow the arresting officer to the local jail. A large number of strikers followed him to the jail, where they made threats against him. Banks testified that the pickets, both at the Plant and at the jail, told him "you will never get back to Chattanooga. We will get you when you get out of here." He estimated there were over 100 people gathered at the jail, harassing and threatening him (170a, 243a).

The Thurston truck was followed out of Dayton onto the highway, where the husband of one striker used his automobile to block its passage. He was arrested by a

highway patrol officer and his subsequent fine was paid by the Union. As a result of these incidents, Thurston Motor Lines refused to provide any further service to the Plant until it could be assured of adequate police protection (177a, 247a).

The above-related instances typify the activities which shut off the normal daily pickup of shipments. To coordinate the efforts to block these motor carriers, a system of "walkie-talkie" radios was utilized between the picket line and union headquarters. On at least one occasion when a truck approached the Plant, Ted Benton appeared on the scene and replaced the two pickets walking in the gate with other strikers, explaining that the replacements knew how to walk in a manner so that the trucks could not get in (114a, 142a, 207a).

Unlawful Interference With Non-Striking Employees

From the commencement of the strike, a number of production and maintenance employees, along with the office and management employees, continued to report for work. The number of persons reporting for work gradually increased during the strike so that by June 24 a total of 112 employees reported, including some 60 production workers and approximately 50 office and supervisory personnel (329a, 516a).

Throughout the strike, attempts were made to prevent these employees from exercising their right to continue working. Large quantities of bent nails and glass were strewn in the plant entrance ways on a daily basis. These were washed away by the Company with the use of a fire hose, but a new supply always appeared by the next day. There were numerous flat tires, including an occasion when all four tires on the company station wagon were

flattened at once, each tire having been punctured by approximately 20 nails (158a, 220a).

During the latter part of May, an increasing number of incidents of violence occurred both at or near the picket line and away from the strike scene. Nearly every car which attempted to drive onto the plant property was stopped by the pickets, who crisscrossed and circled slowly in the entrance ways. As these cars waited to enter the Plant, they were damaged by rocks, eggs and pieces of concrete thrown from crowds of strikers gathered near the gates. Windows and windshields were shattered. Ted Benton was shown on a film in such a crowd participating with the strikers as rocks hit the automobiles. Both he and Rainey admitted being in crowds at the picket line, but denied seeing any violent acts (154a, 165a, 180a, 440a).

The film of the early strike scenes was taken by plant engineer Wilbert E. Pascal. On the 23rd of May, Pascal and another plant engineer took this film for processing and went to the post office for the company mail. As they emerged from the post office, they were assaulted by strikers Donavan Wilkey and Johnny Louallen. Pascal was taken to the hospital unconscious from a blow on the head. Louallen and Wilkey were arrested for this assault and the Union provided their bail bonds. At their trial, the Union furnished an attorney and, upon conviction, their fines were paid by the Union (183a).

Also, on the morning of May 23, in Benton's presence, pickets blocked the entry of non-striker Robbie Riggs' automobile. This car had already been paint-bombed and smashed with objects thrown by the strikers. As it sat motionless waiting for the pickets to move, one of the pickets, Frances Miller, brushed against it and fell to the

ground, shouting that the car had hit her. Benton went over and helped her up. Thereafter, at union headquarters, Peggy Wright, the local Union secretary-treasurer, in Benton's presence, painted Miller's leg with black shoe polish and rubbed it in to create a false appearance of a large bruise. At Benton's direction, striker Judy Rockholt then photographed Miller's leg. Miller then filed criminal charges against Riggs. The Union also charged Riggs with violence and sought to have her held in contempt of the Chancery Court's injunction. At the hearing before the Chancellor on the contempt charge, the Union presented Frances Miller as a witness against Riggs and introduced into evidence the photograph which purported to show a large bruise on Miller's leg. On the basis of this evidence, the Chancellor adjudged Riggs in contempt of court for injuring Miller. It was not until many months later that witnesses emerged to reveal that the photograph had been faked by the Union (79a, 204a, 275a, 391a).

The violent acts leveled against the non-strikers were not confined to the picket line. Employees' automobiles, homes and businesses were shot into with shotguns and rifles. The violent activity resulted in a large number of the strikers being convicted of criminal contempt of the Chancery Court injunction. Strikers, their relatives and sympathizers also pleaded guilty to, or were found guilty of, numerous criminal acts against the non-strikers. The Union provided attorneys for these people, financially sponsored their defenses and paid the resulting fines (237a, 435a, 504a).

In early October 1968, at the close of one of the bargaining sessions with the Union, Plant Manager Roberson was surrounded by a group of strikers at the Dayton City Hall. He was attacked by Willard Nixon, who was

on the Union's payroll during the strike as a "temporary organizer." Roberson's nose was broken in the attack. The Union supplied an attorney for Nixon and he pleaded guilty to criminal charges stemming from this incident (203a, 436a).

Interference With The Company's Effort To Provide Transportation For Its Working Employees

To prevent further damage to automobiles and to provide safe transportation for employees who were attempting to continue working, the Company leased a bus. A scheduled route was established and non-strikers were notified that they could ride the bus to and from work. Thereupon, Ted Benton directed the strikers to get on the bus and load it down. Large numbers of strikers followed the bus in their cars to the various stopping points and filled the bus to capacity. They then refused to get off until transported back to the Plant. A number of fights and altercations between strikers and non-strikers resulted (208a).

Although the Company later acquired a second bus to provide additional transportation, the jamming tactic continued until the Company discontinued the bus service. Benton then wrote letters to other unions proclaiming the success of his efforts to frustrate the use of buses by the Company. He stated that "we frustrated their every move" (387a, 458a).

The Violent Shutdown Of The Plant

In spite of the incidents related above, the Plant remained open for business. All office personnel and the management staff reported for work daily. The number of production employees who reported for work in-

creased, reaching a peak on June 24, when 60 workers reported, along with 52 office and managerial employees. Shortly before that date, picket captain Alma Mickel advised Benton that she was going to quit the strike because a lot of people were going in to work and the strike was ineffective. Benton stated to her that "if they get to scabbing us too bad, we'll shut the mill down" (53a, 122a, 516a).

On the morning of June 24, 1968, union representative Benton gave instructions that the Plant was to be shut down that day. He told those strikers at strike headquarters to telephone all striking employees and direct them to report to the picket line at shift-change time that afternoon. In his presence, they began making the telephone calls, stating "Ted Benton wanted them to be there at shift change, that the plant was going to be closed." Benton also told Judy Rockholt that he could not be there when it happened but that Walt Rainey was coming in later. Shortly thereafter, Benton left for Atlanta, leaving no official union representative present in Dayton (53a, 83a, 105a).

That afternoon as the shift ended, a crowd of 150 to 200 strikers assembled across the street from the Plant. The Court found that a hail of rocks and missiles struck the departing vehicles. Windows and windshields of almost every automobile were shattered. The company bus was severely damaged (187a).

Simultaneously with the attack upon these cars and their occupants, strikers went up the street alongside the plant breaking out the windows and louvers of the building (197a). The District Court found that some 25 or 30 vehicles were damaged, including the company station wagon which was turned upside down and totally demolished while parked inside the plant area.

Just outside the plant entrance, an automobile occupied by female employees was surrounded by strikers and overturned in the street. Rocks were thrown at the occupants of the overturned car, as they sought to climb out of it. The ladies in the car managed to kick out the shattered glass windshield and crawl out of the car through the opening. They emerged battered and bloody. The rocks continued to rain upon them and they took shelter behind the overturned car. Plant Manager Roberson saw them and started to their aid. But the rocks were then directed at him and he was forced to retreat (189a, 302a).

Roberson identified a number of the strikers who had turned the car over and thrown the rocks. Among those he named were Gene Smith, Bucky Wilkey and Johnny Louallen, each of whom had previously committed violent criminal acts against the non-strikers (Exhibits 20, 21, 33; 183a, 200a). As in the earlier cases, they pleaded guilty to the resulting criminal charges and the Union paid their fines (190a, 202a).

On the following morning, June 25, very few employees attempted to enter the Plant. Susan Montgomery, one of the office employees, attempted to drive into the parking lot but a crowd of strikers surrounded her car. When she told them she would not go home, they turned the car over with her in it. Bucky Wilkey, one of the strikers involved in the previous violence, pleaded guilty to a criminal charge growing out of this incident and the Union paid his fine (199a, 370a).

Only 12 of the office employees and 8 of the production workers got into the Plant for work that morning. Several of the women had their car windows broken as they drove into the parking lot. They were told by the pickets

that if they went into the Plant they would never get out. At this same time, a company truck seeking to deliver materials to the Plant was surrounded by strikers and its tires were slashed (257a, 311a).

While the crowd was occupied blocking the truck, some of the people who had come to work left the Plant. When the attention of the crowd was turned back to those in the Plant, only one supervisor and the 12 female office employees remained. They became fearful of remaining in the Plant and sought to obtain assurances from the strikers that they could leave in safety (267a).

Several of the women began to cry. They made calls for assistance to the police and city officials. Police officers present would not escort the women out. The supervisor, Bobby Payne, went out and talked to the strikers three times but could get no assurance that the women would be allowed to leave unharmed. Union representative Walt Rainey was present at the picket line and appointed one of the strikers as spokesman for the crowd. Arrangements were finally made to permit the office personnel to leave unharmed, but only after they agreed to come out individually to face the crowd and give assurances that they would not again cross the picket line. Aylene Wilkey testified that Rainey had appointed her spokesman for the group and that he had remained there the whole time (108a, 119a, 267a-271a).

Following these events, the Company was unable to get anyone to return to the Plant. Even though the doors of the Plant remained open, none of the employees or management personnel thereafter entered. The Plant remained completely shut down from June 25 until September 16, 1968. On one occasion, the Plant Manager and another company official attempted to re-enter the

Plant at night to obtain records needed by the Company in order to ship goods, but when a sizeable number of strikers immediately appeared at the plant entrance, the officials became fearful for their safety and departed. The strikers then followed them away from the Plant until these officials drove to and entered the police station (333a).

Union Actions Following The Shutdown Of The Plant

Following the above-related incidents, the union officials privately commended the strikers for closing the Plant down. Funeral wreaths appeared on the plant entrances. Benet and Benton returned to Dayton from Atlanta on the night of June 25. They called a meeting with the strikers at union headquarters on the afternoon of the 26th. Both of them addressed the strikers, saying that they were disappointed to learn of the violence and that such illegal acts must be avoided in the future. After this meeting, Judy Rockholt approached Benton and told him she did not understand, to which he replied that he had to tell them that, but "it was a good job done on shutting down the mill" (85a).

A bargaining session was held between company and union representatives on June 28. At the outset of this meeting, company representative Carlysle Isley protested the violence. Benet replied that he knew nothing about any violence. He declared that he had come to the meeting to negotiate a contract and would not discuss the violence or plant shutdown (417a). Furthermore, he accused the Company of unlawful unilateral action in shutting the Plant down of its own volition (417a).

This position was consistently maintained by the Union thereafter. It did not make any statement to the

public or to the Company denouncing or disapproving the violence. Neither Vice President Benet nor the other union officials involved would give any assurance to the Company that a repetition of the violence would not occur (55a, 417a, 442a).

During the weeks that followed the plant shutdown, Benton stayed in Dayton, supervising the strike. On July 5 and on various dates thereafter, he sent letters to representatives of other unions who had supported the strike. In these letters, Benton reported that "we have been able to frustrate every move" of the Company in attempting to operate the Plant, and announced "we have the soldiers to win this battle" (387a). A cover story in the next published issue of the Union's national magazine proclaimed that"When they get angry enough to do things here in Tennessee they go all the way, the strike is 100% effective. The hosiery factory in Dayton seems to have been 'struck by a plague' . . ." (470a).

After becoming convinced that the Plant would remain shut down, the Union chartered buses and took the strikers, including many of those who had engaged in the violence, on trips to Chattanooga, Knoxville, Burlington, N. C., Washington, D. C., and New York City. On these trips, the strikers picketed the stores of Kayser-Roth's customers. In New York, they met the Union's President, William Pollack, who congratulated them for the fine job they had done and renewed the Union's pledge to continue its full support of them. Full financial support was continued by the Union in every respect (431a, 471a).

During the period of the shutdown, an investigative agent of the National Labor Relations Board went to Dayton to investigate the violence and to take affidavits

from the strikers. Striker Aylene Wilkey testified that the union officials helped make up a false story for the strikers to put into the affidavits to the effect that a bunch of strangers had committed all the violence. She also testified that the affidavit she gave to the Board implicated Walt Rainey in the incident on June 25. When Rainey later read the affidavit, he made her change it (118a).

Judy Rockholt testified that she was told by the union representatives that she should never mention them in court (98a). When hearings were held before the Chancery Court upon contempt citations and the Company's motion for an expanded injunction, witness after witness for the Union testified that they had been present in crowds at the Plant and had watched as cars were damaged. But none of them "could remember" who had thrown the rocks, or who had helped turn the cars over. The Chancellor rejected their testimony and found 45 of them, including union representatives Benton, Rainey and Beame, in contempt of the injunction. An expanded injunction was put into effect and access to the Plant was restored to the Company on September 16, 1968. The strike continued thereafter until December 2, 1968, when a collective bargaining agreement was reached between the parties (E49; 202a).[1]

The Company's Claim With Respect To Damages

At the trial, the Company made no claim that it should be awarded general damages for such items as loss of customers or loss of profits on goods not produced or sold. It also made no claim to recover losses sustained

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[1]Numerals preceded by "E" refer to pages of the "Exhibits to Appendix" filed in the Court of Appeals.

on account of its inability, during the strike, to produce, sell or ship socks and pantyhose, the production of which utilized the services of the majority of its employees. The Company limited its claim to those damages growing out of the Union's unlawful interference with the Company's efforts to ship finished, or substantially finished, textured "fishnet" tights, which had already been sold and were awaiting delivery to customers. Additionally, damages were sought for certain extraordinary expenses incurred by the Company as a direct result of the violent and unlawful activities of the Union (344a). The District Court's determination of the amount of these losses was affirmed by the Court of Appeals and is not challenged here.

ARGUMENT

A. The Findings And Conclusions Reached Below That Clear and Convincing Evidence Proved The Union Authorized, Approved And Ratified The Unlawful Strike Violence Are Fully Supported By The Record

The District Court and the Court of Appeals carefully observed the requirement that union responsibility for strike violence can be established only by clear and convincing evidence. The evidence received meticulous scrutiny in the light of the "clear proof" standard expressed in the Norris-LaGuardia Act, 29 U.S.C. §106. This Court's explanation of that standard in *United Mine Workers v. Gibbs*, 383 U. S. 715, 16 L. Ed. 2d 218, 86 S. Ct. 1130 (1966), was expressly considered and followed.

It was the conclusion of both courts below that by the "clear and convincing weight of the evidence" the Union "had authorized, ratified and approved, and was accord-

ingly, responsible for, numerous acts of force and violence . . ." It was also found by clear and convincing evidence that this violence prevented the movement of materials and merchandise, prevented non-striking employees from working, shut the Plant down completely on June 25, and prevented its reopening until September 16, 1968.

In light of the abundant evidence in the record reflecting the Union's connection with unlawful and violent activity, much of which was not contradicted, it is an understatement to say that the Union's responsibility for all this was established merely by clear and convincing evidence. In truth, the evidence established beyond peradventure of doubt that the violent efforts to close the Plant were carried out under the direction, supervision, and control of high-ranking union officials. On numerous occasions, these same union officials personally participated in the violence.

The conduct and supervision of the strike was assigned to Adolph Benet, the Union's International Vice President, and Ted Benton and Walter Rainey, its International Representatives.

Early in May 1968, these union officials leased property adjacent to the plant site for use as the Union's strike headquarters. A furnished mobile office was moved onto this property and equipped with a telephone and two-way "walkie-talkie" radios. Strikers were required to report to the Union's strike headquarters each day. There they were instructed and dispatched to strike duties by Benet, Benton and Rainey (75a, 142a, 390a, 422a, 1256, 1318).

At the very outset, Benton instructed the pickets to make entrance to the Plant difficult. Rainey amplified

Benton's directive with instructions that pickets should stop non-strikers by any means they could, including stripping off their clothes. Benton assured the pickets that the Union would provide bail bond for strikers who might be arrested. From that time on, until the Plant was violently closed on June 25, Benton was, as he admitted, at the picket line practically all the time, "supervising" strike activities. Rainey spent approximately one-half of his time at or near the picket line, assisting Benton (81a, 390a, 436a, 462a).

At first, a crowd of over 150 strikers, along with Rainey and Benton, massively choked entryways to the Plant. While Benton and Rainey were on the picket line, a company station wagon loaded with office employees was rocked back and forth by strikers in an attempt to turn it over. Also, individual non-strikers were assaulted (133a, 141a, 153a, 182a).

Upon being summoned into State Court to show cause why an injunction should not be issued, Benet and Benton made a false assurance to the Court that they would attempt to stop such activities. When, upon the basis of that, the Court refused to issue an injunction, Benet and Benton proceeded promptly back to the picket line and participated with the pickets in a resumption of precisely the same sort of misconduct (46a, 137a-153a, 402a).

Benet and Benton personally supervised the halting of the Company's interplant transportation. In an incident that extended over a period of hours, these Union officials were on the scene, supervising and directing strikers in blocking the exit of two company trucks, permitting them to leave only after the trucks were unloaded.

Benton personally saw to it that the transportation of company products by Thurston Motor Lines was interrupted. When that Company's equipment approached to enter the plant property, Benton placed two experienced pickets in the gateway to block it while he talked to the drivers. Then when these Thurston employees refused to be scared off, they were showered with stones and falsely arrested on fake warrants with Benton standing by and observing (170a, 243a). Each time that a commercial vehicle approached the Plant, mass pickets were dispatched by radio from the Union's headquarters to block the gates (77a, 114a, 142a).

Benton and Rainey were found to have been observed repeatedly in groups of strikers while vehicles bearing non-strikers were blocked and stoned (165a, 179a, 440a, 476a, Exhibits 14-18). Moreover, Benton admitted the systematic daily implantation of Company driveways with nails and broken glass (159a, 220a). And, when the Company sought to overcome the effects of this violence by providing bus service for non-striking employees, Benton admittedly directed the strikers in jamming the buses and preventing the passage of non-strikers. Benton's directive was carried out with devastating effect (100a, 159a, 220a).

Upon being confronted by a contempt citation from the State Court, Benton resorted to other treachery. Under his direction and supervision, a striker feigned injury by the automobile of a non-striker at the picket line (205a-206a). Then he personally supervised the faking of a photograph, which the Union lated introduced into evidence in the contempt proceedings, thereby tricking the Court into finding that non-striker guilty of criminal contempt (79a, 204a, 275a, 391a).

In spite of all this, the Plant continued to operate. Benton, therefore, announced that if the "scabbing" operation continued, he would shut the Plant down. In preparation for this, large caches of stones were transported to and stored upon property directly across the street from the plant gates (83a, 122a, 189a, 194a).

On June 25, Benton and Benet were scheduled to appear before the Labor Board in Atlanta. Obviously, Benton regarded this as a ready-made alibi. Before leaving on the morning of the 24th, Benton gave instructions that all strikers be summoned to shut the Plant down at shift-change time that afternoon. As a result, strikers gathered in massive numbers, destroyed practically every breakable thing in sight and severely injured several female employees (187a, 197a, 302a, 455a).

On the following morning, Rainey appeared on the scene. While he was in the Union's headquarters across the street, strikers turned over a vehicle occupied by an office employee who was attempting to enter the Plant. Rainey then appeared at the Plant with a large group of riotous strikers who imprisoned and intimidated the few workers who had dared enter that day. Under Rainey's supervision, an individual apology for crossing the picket line and a promise not to return was exacted from each employee before he or she was permitted to leave (107a, 119a, 266a, 307a).

When Benton returned from Atlanta the next day, he congratulated Rockholt for a job well done in closing the Plant down. Victory for the Union was complete. What followed at the picket line was aptly described by the Union as a "picnic-like" atmosphere. A funeral wreath was placed on the Plant and pickets lazed along the street. At the Union's expense, strikers were taken

in buses on excursions to various points, including the Union's home office in New York City where they were congratulated by Union President, William Pollack (335a, 471a).

In its widely distributed magazine, the Union boasted that "when they get angry enough to do things here in Tennessee they go all the way. The strike is 100% effective. The hosiery factory in Dayton seems to have been 'struck by a plague'. . . ." Benton supplemented this with letters to various union confederates wherein he bragged that, even though the Company had attempted in various ways to continue plant operations, "we have the soldiers to win this battle" and that they had "frustrated every move" the Company had made (387a, 470a).

With no apparent concern over the guilt of strikers, the Union stood solidly behind its promise to protect them against charges of criminal activities. Bail bonds and defense counsel were provided immediately for all who were arrested. All who were charged, except Dan Harvey, pleaded guilty. Harvey was convicted. Along with Benton and Rainey, 43 strikers were convicted of criminal contempt. Union counsel represented all of them, even though many did not deny their guilt. The Union paid all fines which were levied. In all, the Union paid out $167,808.11 in attorneys' fees. Another $155,869.46 was spent on strike benefits, appeal bonds, and fines (81a, 436a, 504a, Exhibits 20, 21, 26, 32, 36; 183a, 200a—203a).

As the evidence shows, in one way or another the Union's hand reached into each and every act of violence committed against the Company and its non-striking employees. It is hard to conceive of a case where union

responsibility could be proven by evidence more clear and convincing.

In collective bargaining sessions which followed the closing of the Plant, Benton and Benet insisted that they had no knowledge whatever of any strike violence. They flatly refused to discuss with company officials the matters of restoring order to the picket line or granting the Company access to its Plant (227a, 418a).

The Union argues that if it is held responsible in this case Section 6 of the Norris-LaGuardia Act will be eroded. It contends that a union should not be held responsible for violence unless it formally authorizes its officials in advance to engage in specific acts of strike violence.

The Norris-LaGuardia Act does not impose any such requirement.

> "What is required is proof, either that the Union approved the violence which occurred, or that it participated actively or by knowing tolerance in further acts which were in themselves actionable under state law or intentionally drew upon the previous violence for their force."
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> *United Mine Workers v. Gibbs*, 383 U.S. 715, 739, 16 L. Ed. 2d 218, 235, 86 S. Ct. 1130 (1966)

Accord: *United Brotherhood of Carpenters v. United States*, 330 U.S. 395, 409, 91 L. Ed. 973, 986, 67 S. Ct. 775 (1947); *Riverside Coal Co. v. United Mine Workers*, 410 F. 2d 267 (6th Cir. 1969); *Dean Coal Company v. United Mine Workers*, 421 F. 2d 1380 (6th Cir. 1970).

B. The Decision Of The Court Of Appeals In This Case Is Not In Conflict With Decisions Rendered In Other Federal Courts Of Appeals

The Union asserts that this case is in conflict with a recent case decided in the Fifth Circuit concerning the application of §6 of the Norris-LaGuardia Act. But an examination of this section of the Act, as applied by this Court, and the Courts of Appeals reveals no conflict in its application.

In the *Gibbs* case, quoted above, this Court carefully explained the basic framework of §6 and how it is to be applied by the Courts of Appeals. As was stated there, the "driving force" behind §6 was "the fear that unions might be destroyed if they could be held liable for damage done by acts beyond their practical control." 383 U.S. at 737, 16 L. Ed. 2d at 234, 86 S. Ct. 1130. In the present case, the evidence clearly reveals that the union officials not only controlled the strikers, they guided them down the path toward physically violent acts endangering the lives of many innocent persons. The Union is in no position to say that these events were beyond its control. On the contrary, the increasing acts of violence, which, over a period of weeks, developed into a wholesale riot, were perpetrated with the aid and direct participation of top ranking union leaders.

Gibbs also states that a union will be held accountable if it "builds upon" the fear which has been engendered by acts of violence, or "draws upon" the force of such violence. 383 U.S. at 735, 739, 16 L. Ed. 2d at 233, 235, 86 S. Ct. 1130. Certainly the Union did both in the instant case. After the bloodshed and destruction of June 24 and 25, the Union published an account of its successful "plague" upon the Plant. This publication was

mailed to its membership nationwide along with an appeal for further support of the strike. Other unions were appealed to for support. These appeals bragged that the Union's "soldiers" had "frustrated" every move of the Company.

The violent shutdown put the Plant out of business for months, causing a substantial amount of added pressure upon the Company in the bargaining negotiations. Nevertheless, the Union flatly refused to take any action to nullify or remove the force and impact of the violence. There was no evidence that at any time the Union "did what it could"[1] to restrain or curtail the violence. It refused to discuss the restoration of control of the plant to the Company. Instead of doing what it could to curtail the effects of the violence, the evidence clearly proved that the Union was willing "to see its ends accomplished through violence."[2]

All of these facts, which the District Court found were clearly and convincingly established, lead to the inescapable conclusion that under *Gibbs*, and under §6 of the Act, the Union should be held accountable for the destruction and damage that occurred.

The Union argues that *Dow Chemical Company v. International Union of Electrical, Radio and Machine Workers, AFL-CIO*, ____F. 2d ____, 83 LRRM 2417 (5th Cir. 1973) is in conflict with the instant case and other Sixth Circuit cases over the proof required by §6. But a comparison of the cases fails to reveal any conflict.

Dow and the instant case have material factual differences which explain the results of each. In *Dow*, the

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[1]*United Mine Workers v. Gibbs*, 383 U.S. 715, 739, 16 L. Ed. 2d 218, 235, 86 S. Ct. 1130 (1966).

[2]383 U.S. at 742, 16 L. Ed. 2d at 237, 86 S. Ct. 1130.

District Court found insufficient involvement by high-level officials of an international union to meet the clear proof standard of §6. Although there was disputed testimony[1] of involvement by international representatives in that case, the District Court did not accept this testimony as fact. The Fifth Circuit merely applied its "clearly erroneous" rule in finding that there was not sufficient basis for overturning the trial court's conclusion in *Dow*.

With regard to §6 of the Act, the opinion rendered by the Fifth Circuit in *Dow* cites the Sixth Circuit's decision in *United Mine Workers v. Meadow Creek Coal Company*, 263 F. 2d 52 (6th Cir. 1959). This reliance by the *Dow* panel upon *Meadow Creek* indicates that there is no conflict between the views of the two circuits. The uniformity of views upon the application of §6 is also demonstrated by the fact that the District Court in the instant case also cited and relied upon the *Meadow Creek* decision.

Moreover, the factual distinctions between *Dow* and the instant case are clearly apparent. A reading of the *Dow* opinion shows that there was no evidence of ratification by high union officials and there were no findings of fact comparable to the rock throwing and bloodshed involved in the instant case, which the court found was directed and approved by the Union's International Representatives. Moreover, there was no finding in that case that the Union's President and Vice President hailed

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[1]In its Petition to this Court, the Union tries to create an impression of factual similarity between *Dow* and this case by purporting to quote, on page 21, the "facts" found in the *Dow* case. However, what is actually quoted there is merely "disputed testimony" in the District Court, and not "facts" found by the Court. Actually, the Court rejected the disputed testimony upon balance with other testimony in the case.

the strikers' activities as achieving a great success for the Union. Here they not only spread their congratulations all over the nation, they took advantage of every benefit they could possibly derive from the force and effects of the violence.

There was no finding in *Dow* that the Union officials involved there promised the strikers indemnity from any financial consequences that might result from court prosecutions for illegal acts and subsequently fulfilled such promise by providing counsel, and fine payments, for one and all. In the present case such findings were made. The evidence revealed not only that the Union paid the fines in this instant case, but also that a massive effort was made by top union officials and representatives to fabricate evidence in order to hide the true facts from both the courts and the Labor Board.

In sum, a comparison of *Dow* and the present case fails to present a contrast in the standards applied to a given set of facts. On the contrary, the courts have applied the same standards, but to different facts.

In this case, the trial court carefully observed the witnesses and critically analyzed their testimony. It found the testimony of witnesses presented by the plaintiff to be clear and convincing. The Union's representatives either admitted or failed to deny much of their involvement in unlawful activity and the court found the evidence to be clear and certain that they were intimately involved in all of it. Many of the films and documentary exhibits showed the Union's involvement in a fashion which could not be contradicted.

The findings of the trial court were affirmed by the Court of Appeals, and thus stand before this Court as unanimous, concurrent fact findings by the courts below. This being the case, the Union's insistence that this

Court review the evidence and absolve it of all wrongdoing should be denied. *Berenyi v. Immigration Service*, 385 U.S. 630, 635, 17 L. Ed. 2d 656, 661, 87 S. Ct. 666 (1967); *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 271, 275, 93 L. Ed. 672, 677, 69 S. Ct. 535 (1949).

C. The Decision Below Is Consistent With The Established Law As Enunciated By This Court And Presents No Novel Issues To Be Decided

This Court has consistently recognized the rights of the States to deal with violence and related activity appearing in labor disputes. A variety of remedial measures grounded in state law have been sustained against contentions that the field of labor-management relations was entirely pre-empted by the passage of federal labor relations statutes. *United Mine Workers vs. Gibbs*, 383 U.S. 715, 729, 16 L. Ed. 2d 218, 230, 86 S. Ct. 1130 (1966) collects these cases.

It is also a well-established principle, not only of labor-management relations but of general application, that persons who desire to redress alleged grievances do so through established legal channels. Resort to acts of violence and destruction, such as those inflicted upon the Company, its non-striking employees, and persons seeking to do business with the Company, is intolerable in any civilized society.

Nevertheless, defying all logic and reason, the Union requests this Court to save it harmless from incurring any adverse consequences from engaging in such lawless acts. It asks this Court to do so because of an imagined "southern textile conspiracy", about which nothing appears in the record in this case.

Thus, not only is the Union's argument grounded upon baseless assertions never involved in the litigation below, it also flies in the face of one of the most fundamental values of society—that of maintaining peace, order and safety for all citizens.

The Union argues that the strike was "caused" by the way the Company acted in bargaining. But regardless of what caused the strike, it cannot be said that the Company caused the violence and bloodshed, and therefore must suffer the consequences of this intolerable conduct without recourse. This Court long ago rejected the very same theory now advanced by the Union.

> "Nor is it questioned that the seizure and retention of respondent's property were unlawful. It was a high-handed proceeding without shadow of legal right. It became the subject of denunciation by the state court under the state law, resulting in fines and jail sentences for defiance of the court's order to vacate and in a final decree for respondent as the complainant in the injunction suit.
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> "For the unfair labor practices of respondent the Act provided a remedy. Interference in the summer and fall of 1936 with the right of self-organization could at once have been the subject of complaint to the Board. The same remedy was available to the employees when collective bargaining was refused on February 17, 1937. But reprehensible as was that conduct of the respondent, there is no ground for saying that it made respondent an outlaw or deprived it of its legal rights to the possession and protection of its property. The employees had the right to strike but they had no license to commit acts of violence or to

seize their employer's plant. We may put on one side the contested questions as to the circumstances and extent of injury to the plant and its contents in the efforts of men to resist eviction. The seizure and holding of the buildings was itself a wrong apart from any acts of sabotage. But in its legal aspect the ousting of the owner from lawful possession is not essentially different from an assault upon the officers of an employing company, or the seizure and conversion of its goods, or the despoiling of its property or other unlawful acts in order to force compliance with demands. To justify such conduct because of the existence of a labor dispute or of an unfair labor practice would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie at the foundations of society.

"As respondent's unfair labor practices afforded no excuse for the seizure and holding of its buildings, respondent had its normal rights of redress. Those rights, in their most obvious scope, included the right to discharge the wrongdoers from its employ. To say that respondent could resort to the state court to recover damages or to procure punishment, but was powerless to discharge those responsible for the unlawful seizure would be to create an anomalous distinction for which there is no warrant. . . ."

National Labor Relations Board v. Fansteel Metallurgical Corporation, 306 U.S. 240, 252, 253-254, 83 L. Ed. 627, 633, 634, 59 S. Ct. 490 (1939).

See also: *National Labor Relations Board v. Deena Artware, Inc.*, 198 F. 2d 645 (6th Cir. 1952), cert. de-

nied, 345 U.S. 906, 97 L. Ed. 1342, 73 S. Ct. 644 (1953), and *United Brick & Clay Workers v. Deena Artware, Inc.*, 198 F. 2d 637 (6th Cir. 1952), cert. denied, 344 U.S. 897, 97 L. Ed. 694, 73 S. Ct. 277 (1952).

As was expressly recognized by this Court in *Fansteel*, the fact that a company has been found to have committed unfair labor practices, does not render it an outlaw having no recourse to law. For the unfair labor practices, the Board's full range of remedies were imposed upon the Company and complied with in every respect. Substantial injustice would be done if the Union were allowed to impose the violence and its devastating consequences upon the Company as an additional punishment.

CONCLUSION

Upon all of the foregoing, the Respondent earnestly prays the Court to deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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